

**Town of Milford
Zoning Board of Adjustment Minutes
October 15, 2015
Case #2015-18(B)
Poyant Signs along with
CVS Pharmacy
Variance**

Present: Zach Tripp
F. Seagroves
Joan Dargie
Kevin Johnson
Michael Thornton

Excused: Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant, Poyant Signs, along with CVS Pharmacy owner of Map 30, Lot 58, located at 321 Nashua St, in the Commercial District, is requesting a Variance from Article VII, Section 7.06.G.2, to permit a free-standing (pylon/monument) sign exceeding maximum height and square footage.

Approved Minutes on October 29, 2015

Z. Tripp, Chairman read the notice of hearing. The list of abutters was read. No abutters were present. Richard Westergren appeared for applicants. He stated they were asking for more than allowed. Code allows 75 SF and 15 ft. overall height. He is asking for 87.73 SF and overall height of 24 ft. He showed a photo of the standard of CVS as a comparison. They were not asking for that standard. Drawing in the packet shows 87.73 SF which consists of sign box and electronic center which is monochrome; one-color message board doesn't flash or scroll to be in compliance with code. Re height factor, in trying to comply with Planning Bd. request, top of sign consists of 4 x 13 A-frame gable at tip which matches architecture of the building. It is not a sign. Actual sign is 18 ft. 3 in. to top of sign box. Rest is architectural. They have done studies of readability. They are asking for 87.73 SF with 24 ft including the A-frame, which in his opinion doesn't count as signage. In reality it is 18 ft. 3 in. He passed out information re neighboring signs.

J. Dargie asked whether they are illuminated.

R. Westergren said they are internally lit. Figure is the illuminated portion.

Z. Tripp asked for clarification.

R. Westergren referred him to sketch.

Z. Tripp said 19 and 20.

R. Westergren said correct. Sign complies with existing in the area and is smaller than County Stores and Edgewood Shopping Center sign.

Z. Tripp said Shell sign is 14 ft.? What is the Robin's Egg sign?

R. Westergren said he understood Shell wanted to change that sign. Robin's Egg is 11 ft. Not internally lit. Same for Stone House which is externally lit. On CVS portion it is internally illuminated. The electronic center, just the copy is illuminated, all one color. CVS is asking for sign that is compatible with the neighborhood.

Z. Tripp asked if the street address number will be added.

R. Westergren said yes. It will be a double-faced sign.

Z. Tripp said the sketch shows it back from the road. Is that so it is away from the entrance to the main parking lot?

R. Westergren said yes set back and away from the County Store sign so they are not blocking each other.

J. Dargie said County Stores sign is grandfathered. They would be out of the sign ordinance. Spirit of the sign ordinance is to control what is already happening so it doesn't continue.

R. Westergren said this is 20 ft. less already.

J. Dargie said 9 ft. taller than maximum of 15 ft.

R. Westergren suggested eliminating the gables, but that was not what the Planning Board wanted. Taking away aesthetics and costs money.

J. Dargie said there are ways to do it.

R. Westergren responded they were trying to make it more compatible with neighborhood

Z. Tripp asked if most businesses have a whole pamphlet of signs.

R. Westergren said what he showed was the standard closest to this proposed sign.

F. Seagroves asked if originally there wasn't going to be a gable.

R. Westergren said no. It has gone through a couple of design phases. They are trying to tie it into the building.

K. Johnson said without the gable it is 19 ft. 3 in.

Disagreement- Z. Tripp and R. Westergren said it was 18 ft. 3 in.

J. Dargie said she went back and compared signs further down the road. St. Joseph's is probably the newest building. It is pretty important for people to find them. They have 8 ft., 9 in., 5 ft. and another 6 ft. Then this would be a 20 ft. sign. She went back to see what we had.

Z. Tripp asked for any other questions from the Board. There were none. He opened the meeting for public comment.

Kathleen Sharkey asked if any reason sign could not be built to conform to the ordinance. Will people not be able to see it unless it exceeds the ordinance dimensions?

R. Westergren said electronic message signs are specific sizes. They are trying to make it aesthetically pleasing and proportional and going over the ordinance by miniscule amount.

K. Sharkey said 24 ft. is a lot. It is a narrow street. You are not looking from Rt. 101, but from a narrow street going to and from the Oval.

R. Westergren said it is set back from the curb line.

K. Sharkey asked if public wouldn't be able to see it.

He asked for other questions. There were none. He closed public portion of the meeting. Applicant read the application into the record:

A variance is requested from Article VII Section 7.06.E.2 of the Zoning Ordinance to permit: a free standing sign that exceeds the 15' maximum height and sq. ft. allowance.

1. Granting the variance would not be contrary to the public interest because:

Proposed sign is in keeping with basic objectives of the zoning ordinance and needed to adequately identify site and services of a new CVS Pharmacy.

2. The use is not contrary to the spirit of the ordinance because:

The proposed signage is in keeping with existing neighboring signs and goals of your ordinance.

3. Granting the variance would do substantial justice because:

Yes, good readable signage is needed to adequately identify this new business visibly for safety and welfare of general public.

4. The proposed use would not diminish surrounding property values:

Proposed new CVS signage is all upscale individual channel letters, LED illumination, which will increase value to this and surrounding properties.

5. Denial of the variance would result in unnecessary hardship.

A). “Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The new CVS building sets back substantially and requires good signage for roadside readability for safe driving decisions when navigating this site

ii) and; The proposed use is a reasonable one because:

We need to adequately identify this new CVS store for safety and welfare of public making driving decisions in a safe manner.

B) Explain how, if the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

A hardship will incur if general public cannot adequately read or identify goods and services available. Good readable signage promotes safety and welfare.

C. Notwithstanding paragraph (B) above, a Variance may be granted without finding a hardship arising from the terms of the Zoning Ordinance when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

i. The Variance requested under this paragraph shall be in harmony with general purpose and intent of the Zoning Ordinance because:

Granting this signage relief will do substantial good for providing excellent readable signs which promotes safety, health, and welfare to our general public.

M. Thornton asked, re height and setback of the sign; when going toward the Oval does the County Store sign obstruct a lower sign?

R. Westergren said it sits back behind the County Store sign. There is a point driving on Nashua St. you will see it for a great distance but there is one point where County Store will block it. That is why it is set back so it can be read for greater length of time.

There being no further questions from the Board, the Board members proceeded to discuss the criteria. variance.

1. Would granting the variance not be contrary to the public interest?

F. Seagroves – yes, didn't see any harm at what is requested. As M. Thornton asked, signs in that area are much larger and a couple of them will interfere with seeing it somewhat. He didn't see there was any harm.

M. Thornton didn't see contrary to public interest. It would not be contrary to the public interest – yes.

J. Dargie – yes, it would not be contrary to the public interest.

K. Johnson – agreed, didn't see threat to health, safety, general welfare of community.

Z. Tripp – re evaluating public interest, whether it would not alter character of the neighborhood. Sign area will not change that. Regarding sign height, it neighborhood there are two signs. This would be tallest. Two tall signs and several conforming or shorter. Question is whether adding taller sign would change essential character of the neighborhood. He will leave that a little up in the air.

2. Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – yes, it could be granted without violating spirit of the ordinance on size and shape. On height, he is hesitant. He is going with yes right now.

J. Dargie – no, granting would violate spirit of the ordinance. She understands larger signs there. Those signs happen to be backlit with bright white-colored light. They're talking about much taller sign with bright red glaring light. Reason for the sign ordinance is to control signs that are grandfathered because they got in before the sign ordinance was created. R. Westergren said there was no difference in illumination.

K. Johnson didn't think it could be granted without violating spirit of the ordinance. As Joan pointed out, one of the intents of this ordinance when originally proposed was to reduce proliferation of signs such as those already existing at Edgewood. If they continue to say the surrounding signs are the same or larger and grant this one, they have in effect negated the ordinance.

F. Seagroves – reading the handbook, it mentions health, safety, general welfare of the community. Always has a problem with lit sign. He asked applicant if it was non-changing. R. Westergren said it is changeable but it won't flash or scroll. Message is static. F. Seagroves has problem with signs that change because people are trying to read them, and for him that was a safety violation. R. Westergren said it was in compliance. They have to follow the code as to the minutes. K. Johnson read from NH Supreme Court case Bacon v. Enfield, focusing on the spirit of the ordinance factor the Court concluded “while a single addition to a house may not affect the shorefront congestion or the overall value of the lake as a natural resource the cumulative impact of many such projects might be significant.” That is where he and Joan agreed that at some point the spirit of the ordinance has to be seriously concerned; while it may seem to put the applicant at a disadvantage because other signs are there at some point they have to take steps to prevent that continuing impact.

Z. Tripp – re sign area it is within the spirit of the ordinance. It is close enough to the requirements re height. Per other comments this is a tallest sign and intent of the ordinance is to prevent exactly what is being applied for. He felt by definition 24 ft. height is in violation of the ordinance. He understood Planning Bd. had him put gable in there and apologized for the conflict between the two boards, but in applying this question he thought the overall 24 ft. is in violation of the ordinance.

3. Would granting the variance do substantial justice?

J. Dargie- no, didn't see how it is doing substantial justice over what it is doing to the general public.

K. Johnson – no, didn't think substantial justice would be done. General public has vested interest in controlling signage, specifically along well-traveled roadways. Holding applicant to the ordinance would not result in significant loss.

F. Seagroves – no, this goes along with general public interest. They have sign ordinance for heights. As stated, most signs in the area are grandfathered. He couldn't see where they were going to get a bigger sign in there and didn't think granting met the criteria.

M. Thornton - the size and shape didn't bother him. But as stated above, 9 ft. above allowed sign height did. In comparison to what is in the ordinance. He has to say no.

R. Westergren said can't look at that as non-sign area it is architectural embellishment.

K. Johnson – even if they took suggested gable of, it is still 19 ft. 3 in. and still above allowable 15 ft. and he would still find, even without the gable, it was still an objectionably tall sign.

Z. Tripp – no, question is public gain by not having another large sign in that area. He goes back to changing essential character of the neighborhood. Question of what applicant would lose vs. public gain. They already have signs on the sides of the building. He didn't think having a sign that height would outweigh gain to public.

4. Could the variance be granted without diminishing the value of abutting property?

K. Johnson – yes, it could be granted without diminishing value of surrounding properties. It is commercial area with commercial development. Whatever goes on that property will have minimal impact on surrounding values.

F. Seagroves agreed. He didn't think it would diminish value of surrounding properties.

M. Thornton – yes. No way will it impact value of the surrounding properties.

J. Dargie – no, believed the value of abutting properties across the street, which are Stone House are residential. CVS received a variance to split the lots. They have already done something contrary to the zoning regulations for them to be here. It could not be granted without diminishing value.

Z. Tripp – can grant without diminishing value of surrounding properties. Whether conforming or nonconforming, it is commercial area. Property values are mostly commercial except for Stone House condos. Values are probably already impacted by existing sign across the street.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

- A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;**
ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

K. Johnson – No, it would not create a hardship. He saw no special conditions to this property that would necessitate granting a sign greater than what is allowed in the ordinance.

Z. Tripp asked if he wanted to comment to distinguish between the length and height.

K. Johnson said no need. Both heights without gable and sign area exceed ordinance. No clear justification for needing to exceed it. No special condition or unique about the property or location of the proposed sign that make granting necessary. Use is a reasonable one. Since criteria in the paragraph was not established if, owing to the specific conditions – found no special conditions.

F. Seagroves – agreed with K. Johnson on everything. No, proposed use not a reasonable one. To much more than ordinance allows.

Z. Tripp asked if he felt same about height and area.

F. Seagroves said no for both.

M. Thornton – no for height and yes for size. Size, it is set 30 ft from the road. Difference in size could be seen as necessary but height is so far over the zoning as not to be acceptable. There is nothing unique about this property.

J. Dargie agreed with everyone. Denying the variance would not result in unnecessary hardship. There is plenty of other signage that will be quite visible. No need for height and extra size on the sign. She didn't see any special conditions.

Z. Tripp – Re height, whether there is anything unique about the property, sign is set back from the street. Assumes will help sight line along the long parking traveling west. Using that criteria – it is special condition to justify larger area. It is reasonable increase in area over ordinance. Re height, as other members stated, makes this sign tallest of anything in the area. He didn't see anything unique about the property that would result in hardship to applicant if it is used in strict conformance because he will still have that sign and two wall signs. Use is a reasonable one. No special conditions. Property can still be used in strict conformance, being the height. This variance doesn't meet the hardship criteria.

R. Westergren asked if Board would approve the square footage and change the height and just alter the drawings accordingly?

Z. Tripp made a motion for special condition on approval that the height not exceed ordinance of 15 ft.

F. Seagroves seconded.

Vote on Motion for special condition:

Z. Tripp – yes; F. Seagroves – yes; M. Thornton – yes; J. Dargie – no; K. Johnson – no, because ordinance specifies 15 ft. and that is not the application before them.

Motion carried 3 – 2.

J. Dargie – concern is not being able to see what it is going to result in.

R. Westergren said look at it without the A-frame.

J. Dargie said they already determined without the A-frame it is 19 ft. It is still exceeding.

K. Johnson said that means redesign.

F. Seagroves said shorten the pylons on bottom.

Z. Tripp asked applicant if he agreed total sign area of 87.83 ft.

R. Westergren agreed.

Z. Tripp agreed total 87.73 ft. Condition was, if approved, approval will be based on a total sign area of 87.73 SF and overall height that doesn't exceed 15 ft.

Z. Tripp – yes; F. Seagroves – yes; M. Thornton – yes; J. Dargie – no; K. Johnson – no

J. Dargie asked, for discussion, if Planning Board looked at it, would they look at it again? ZBA could take off what they requested?

R. Westergren said it doesn't go back to them. It wasn't a condition of Planning Board approval. It was a suggestion.

Vote on Criteria:

Would granting the variance not be contrary to the public interest? Given the special condition of 87.73 SF and the height does not exceed 15 ft.?

F. Seagroves – yes; M. Thornton – yes; J. Dargie – yes; K. Johnson – yes; Z. Tripp - yes

Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – yes; J. Dargie – no; K. Johnson – no; F. Seagroves, with special condition – yes; Z. Tripp – yes, with special condition

Would granting the variance do substantial justice?

M. Thornton – yes; J. Dargie – no; K. Johnson – no; F. Seagroves – yes; Z. Tripp - yes

Could the variance be granted without diminishing the value of surrounding property?

J. Dargie – no; K. Johnson - yes; F. Seagroves – yes; M. Thornton – yes; Z. Tripp – yes;

Would denial of the variance result in unnecessary hardship?

K. Johnson – no; F. Seagroves – yes; M. Thornton – with stipulation, yes; J. Dargie – no; Z. Tripp – with stipulation, yes.

M. Thornton moved that Case #2015-18(B) be granted with the prior approved condition.

F. Seagroves seconded.

Final Vote:

M. Thornton – yes; F. Seagroves – yes; J. Dargie – no; K. Johnson – no; Z. Tripp – yes

Case #2015-18(B) approved for the condition by 3 – 2 vote.